

Title 292 WAC

ETHICS IN PUBLIC SERVICE

Chapters

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Executive Branch

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 292-08 AGENCY ORGANIZATION—CONFIDENTIALITY

292-08-010 Purpose. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-08-020 Function. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-08-030 Definitions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-08-040 Organization. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-08-050 Confidentiality provisions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-12 PROCEDURAL RULES

292-12-010 Preliminary investigation. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-020 Initial proceedings. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-030 Statement of charges. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-040 Fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-050 Disqualification of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-060 Procedural rights of judge. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-060, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-070 Guardian ad litem. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-070, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-080 Discovery procedure before fact-finding. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-080, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-090 Amendments to statement of charges or answer. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-090, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-110 Procedure at fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-110, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-120 Report of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-120, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-130 Commission decision. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-130, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-140 Additional evidence. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-140, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-150 Supreme court procedures. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-150, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-160 Reinstatement of eligibility. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-160, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

- 292-12-170 Extension of time. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31, 90-10-059, § 292-12-170, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-180 Service. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31, 90-10-059, § 292-12-180, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-09 WAC AGENCY PROCEDURAL RULES

WAC

- 292-09-010 Purpose of this chapter.
 292-09-020 Role of the commission on judicial conduct.
 292-09-030 Organization of the commission on judicial conduct.
 292-09-040 Definitions.
 292-09-050 Complaints and investigations.
 292-09-060 Determination of reasonable cause.
 292-09-070 Respondent's answer to complaint.
 292-09-080 Stipulated dispositions.
 292-09-090 Adoption of model rules of procedure.
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 292-09-130 Fact-finding hearing.
 292-09-140 Documents—Filing.
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 292-09-160 Subpoenas.
 292-09-170 Judicial review.

WAC 292-09-010 Purpose of this chapter. The purpose of this chapter is to provide rules implementing the Ethics in Public Service Act (chapter 42.52 RCW) according to procedures prescribed in Article IV, Section 31, of the Constitution of the state of Washington and chapter 2.64 RCW for the commission on judicial conduct.

All proceedings involving state employees of the judicial branch of state government, except "judges" as defined in *Commission On Judicial Conduct Rules of Procedure (CJCRP)*, shall proceed under the rules set forth in this chapter. All proceedings involving "judges" as defined in RCW 2.64.010 and the Code of Judicial Conduct shall proceed exclusively under the rules set forth in the *CJCRP*.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 97-13-069, § 292-09-010, filed 6/18/97, effective 7/19/97; 95-05-031 (Order 95-01), § 292-09-010, filed 2/8/95, effective 3/11/95.]

WAC 292-09-020 Role of the commission on judicial conduct. The commission on judicial conduct is constitutionally created to investigate and consider complaints concerning judges. The commission also has jurisdiction to investigate and consider complaints of violations of the Ethics in Public Service Act (chapter 42.52 RCW) or rules adopted under it, concerning state employees of the judicial branch.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-020, filed 2/8/95, effective 3/11/95.]

WAC 292-09-030 Organization of the commission on judicial conduct. Six members of the commission must be present to take action at a commission business meeting. The adoption of or amendment to the rules of the commission shall require the affirmative vote of six members of the commission.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-030, filed 2/8/95, effective 3/11/95.]

WAC 292-09-040 Definitions. In these rules:

"Adjudicative proceeding" means a proceeding before the commission in which the person involved is given notice and an opportunity to be heard after a determination of reasonable cause that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Administrative law judge" means a person assigned by the office of administrative hearings in accordance with chapter 34.12 RCW and appointed by the commission to hear and take evidence with respect to charges against a state employee of the judicial branch.

"Commission" means the commission on judicial conduct.

"Complainant" means the organization, association, or person who makes a complaint alleging violation of chapter 42.52 RCW or rules adopted under it.

"Complaint" means a written statement on a form provided by the commission alleging facts which may upon investigation lead to a finding of a violation of chapter 42.52 RCW or rules adopted under it.

"Determination" means a written statement finding that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Employee" means a state employee or state officer (as defined in RCW 42.52.010) of the judicial branch of state government, except "judges" (as defined in RCW 2.64.010 and the Code of Judicial Conduct), or the employee's attorney, as the context suggests.

"Enforcement action" means the imposition of sanctions, which may include one or more of the following:

- A reprimand;
- A recommendation that the employing agency commence disciplinary action against an employee; and/or
- An order for payment of any damages, civil penalties, and/or costs as permitted by chapter 42.52 RCW.

Any order for payment shall also include a reprimand.

"Fact-finder" means the commission or an administrative law judge appointed by the commission.

"Hearing" means a public hearing conducted in an adjudicative proceeding.

"Meeting" means a business meeting of the commission for any purpose other than a public hearing or executive session involving the investigation or consideration of a complaint.

"Member" means a member of the commission and includes alternates acting as members.

"Public member" means a member of the commission who is neither a lawyer nor a judge.

"Reprimand" means an enforcement action of the commission that finds that the conduct of the respondent violates chapter 42.52 RCW or rules adopted under it. A reprimand may include a requirement that the respondent follow a specified corrective course of action. The commission shall issue a written reprimand and may require the respondent to appear personally before the commission for a public reading of the

reprimand. The commission shall provide a copy of the reprimand to the respondent's employing agency.

"Respondent" means a state employee of the judicial branch who is the subject of a complaint, or the employee's attorney, as the context suggests.

"Staff" means the employees, or others under personal service contract or agreement, engaged to perform commission duties and to exercise commission powers.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-040, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-040, filed 2/8/95, effective 3/11/95.]

WAC 292-09-050 Complaints and investigations. (1)

Any organization, association, or person, including a member of the commission, may make a complaint to the commission alleging violation of chapter 42.52 RCW or rules adopted under it. A complaint shall be made in writing on a form provided by the commission. A complaint may be made personally or by the complainant's attorney.

(2) Upon receipt of a complaint, the commission staff shall investigate and evaluate the allegations. The investigation shall be limited to the facts alleged in the complaint. On every complaint received, the commission staff shall make a written recommendation that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed. The commission shall make a written determination whether there is reasonable cause based upon the complaint and the recommendation. A copy of the determination shall be provided to the complainant and to the respondent. If the determination concludes that there is no reasonable cause, a copy shall also be provided to the attorney general.

(3) Complaints pursuant to RCW 42.52.450 shall be investigated by the attorney general. As appropriate, pursuant to RCW 42.52.470, the commission may refer a complaint to the employing agency, the attorney general, or the prosecutor.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-050, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-050, filed 2/8/95, effective 3/11/95.]

WAC 292-09-060 Determination of reasonable cause. If the commission determines that reasonable cause exists that the respondent has violated chapter 42.52 RCW or rules adopted under it, the commission shall schedule a public hearing on the merits of the complaint.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-060, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-060, filed 2/8/95, effective 3/11/95.]

WAC 292-09-070 Respondent's answer to complaint.

The respondent shall file a written answer to the complaint not later than thirty days after receipt of the determination that there is reasonable cause. Failure to file a written answer shall be deemed an admission to the facts alleged in the complaint and the determination.

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[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-070, filed 2/8/95, effective 3/11/95.]

WAC 292-09-080 Stipulated dispositions. Any matter before the commission may be disposed of by a stipulation at any stage of the proceeding. The respondent and a member of the commission staff shall sign the stipulation before presentation to the commission. The commission may impose any terms and conditions deemed appropriate. If the stipulation is rejected by the commission, the stipulation shall be withdrawn and cannot be used by or against the respondent in any proceeding.

When a stipulation which disposes of a complaint is accepted by the commission, the commission shall provide a copy of the stipulation to the attorney general and the complainant.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-080, filed 2/8/95, effective 3/11/95.]

WAC 292-09-090 Adoption of model rules of procedure. Part IV—Adjudicative Proceedings—of chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the commission. In the case of conflict between chapter 34.05 RCW or the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the commission shall take precedence.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-090, filed 2/8/95, effective 3/11/95.]

WAC 292-09-100 Presiding officer. (1) In matters involving an adjudicative proceeding, the commission may designate as presiding officer a member of the commission, or an administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding, or someone who is subject to the authority or direction of such a person, may not serve as a presiding officer in the same proceeding.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-100, filed 2/8/95, effective 3/11/95.]

WAC 292-09-110 Discovery. The statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used where applicable unless in conflict with this chapter.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-110, filed 2/8/95, effective 3/11/95.]

WAC 292-09-120 Discovery—Authority of presiding officer. The presiding officer may permit discovery in an adjudicative proceeding. The presiding officer shall have the power to control the frequency and nature of discovery permitted and to order conferences to discuss discovery issues.

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[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-120, filed 2/8/95, effective 3/11/95.]

WAC 292-09-130 Fact-finding hearing. (1) Upon filing of a determination of reasonable cause, a public fact-finding hearing will be scheduled at a location and time selected by the commission. The respondent shall have at least twenty days notice of the hearing and shall appear at the hearing in person, with or without counsel.

(2) Where there is a possibility that the respondent may be liable for a total amount of penalty and costs of more than five hundred dollars, the respondent may choose to have an administrative law judge conduct the hearing. The respondent shall indicate such choice in writing within thirty days after receipt of the determination. Notwithstanding the respondent's choice, the commission may, on its own initiative, retain an administrative law judge.

(3) Testimony taken at the hearing shall be under oath and recorded.

(4) The case in support of the complaint shall be presented at the hearing by commission staff. After the staff's case in chief, the respondent shall have the opportunity to present evidence. Both parties shall have the opportunity to cross-examine witnesses.

(5) If, based upon a preponderance of the evidence, the fact-finder finds that the respondent has violated chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an enforcement action.

(6) If, based upon all the evidence, the fact-finder finds that the respondent has not engaged in an alleged violation of chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an order dismissing the complaint.

(7) Civil penalties included within an enforcement action shall be established based upon the following nonexclusive aggravating and mitigating factors:

(a) Whether the violation is an isolated instance or evidences a pattern of conduct;

(b) The nature, extent, and frequency of occurrence of the violation;

(c) Whether the employee acknowledged or recognized that the violation occurred;

(d) Whether the employee has evidenced an effort to change or modify the conduct that resulted in a violation;

(e) The length of service of the employee;

(f) Whether there have been prior violations of ethics rules by the employee;

(g) The effect the violation has upon the integrity and respect for the judiciary; and

(h) The extent to which the employee exploited the position to satisfy personal desires.

(8) If the fact-finder is not the commission, the decision shall be entered as an initial order. Unless the respondent or the commission's staff files a petition for review of an initial order within twenty days of service of the initial order, the commission may adopt the initial order as its final order without further notice to the respondent. If the commission, upon its own motion, determines that the initial order should be reviewed, notice shall be given to the respondent.

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[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-130, filed 2/8/95, effective 3/11/95.]

WAC 292-09-140 Documents—Filing. Any document filed with the commission under the provisions of the Administrative Procedure Act, chapter 34.05 RCW; model rules of procedure, chapter 10-08 WAC; and this chapter shall be filed with the Commission on Judicial Conduct, 210 11th Avenue SW, #400, Olympia, WA 98504 or P.O. Box 1817, Olympia, WA 98507.

Unless otherwise required by law, filing of a document with the commission shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by facsimile and same-day mailing or original showing same-day postmark. Filing shall occur within the period of time specified for filing by statute, rule, or order.

[Statutory Authority: Art. IV, Section 31, Washington State Constitution, RCW 42.52.370, and chapter 2.64 RCW. 05-23-069 (Order 05-02), § 292-09-140, filed 11/15/05, effective 12/16/05. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-140, filed 2/8/95, effective 3/11/95.]

WAC 292-09-150 Witness fees. All witnesses shall receive fees and expenses in the amount allowed by law for witnesses in the superior court. The person calling the witness shall be responsible for paying the witness's fees and expenses.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-150, filed 2/8/95, effective 3/11/95.]

WAC 292-09-160 Subpoenas. (1) Investigative. The commission may subpoena witnesses, compel their attendance, administer oaths, take testimony of a person under oath, or require production for examination of any books, accounts, records, certificates, or papers relating to any matter under investigation or in question before the commission. Subpoenas may be issued by any member of the commission.

(2) Adjudicative. Subpoenas shall be issued and enforced as provided by chapter 10-08 WAC, chapter 34.05 RCW, and chapter 42.52 RCW, as appropriate.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-160, filed 2/8/95, effective 3/11/95.]

WAC 292-09-170 Judicial review. Except as otherwise provided by law, judicial review of a commission order that a violation of chapter 42.52 RCW or rules adopted under it has occurred is governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-170, filed 2/8/95, effective 3/11/95.]

Chapter 292-10 WAC PUBLIC RECORDS

WAC

292-10-010
292-10-020
292-10-030

Purpose.
Public records available.
Records index.

(2007 Ed.)

292-10-040	Requests for public records.
292-10-050	Fees.
292-10-060	Statement of reasons for denial of public records request.
292-10-070	Protection of public records.

WAC 292-10-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17.250 through 42.17.340 relating to access to public records.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-010, filed 2/5/91, effective 3/8/91.]

WAC 292-10-020 Public records available. All commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and 42.17.310. In accordance with chapter 256, Laws of 1990, work and home addresses of any person requesting in writing that their addresses be kept private because disclosure would endanger life, safety or property, shall be omitted from all documents in public files.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-020, filed 2/5/91, effective 3/8/91.]

WAC 292-10-030 Records index. The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-030, filed 2/5/91, effective 3/8/91.]

WAC 292-10-040 Requests for public records. (1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date Time
 Name
 Address

 Representing
 Description of Records:

I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

	Signature
Number of copies
Number of pages
Per page charge	\$
Total charge	\$

(2) All requests made in person may be made to the agency at General Administration Building, 210 11th Ave. S.W., Suite 400, Olympia, WA 98504, between the hours of

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8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

- (a) The name and address of the person making the request;
- (b) The organization or group that the person represents;
- (c) The time of day and the calendar date on which the person wishes to inspect the public records;
- (d) A description of the public records requested;
- (e) A statement whether access to copying equipment is desired;
- (f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;

(g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.

[Statutory Authority: RCW 42.17.250, 42.17.260 and Article IV, section 31 of the state Constitution, and chapter 2.64 RCW. 05-01-021, § 292-10-040, filed 12/2/04, effective 1/2/05; 91-04-060 (Order 3), § 292-10-040, filed 2/5/91, effective 3/8/91.]

WAC 292-10-050 Fees. No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies. The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-050, filed 2/5/91, effective 3/8/91.]

WAC 292-10-060 Statement of reasons for denial of public records request. When the agency refuses, in whole or in part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-060, filed 2/5/91, effective 3/8/91.]

WAC 292-10-070 Protection of public records. In order to protect the public records of the agency, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the agency's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated agency employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by commission director or designee.

(5) Access to file cabinets, shelves, and other storage areas with public records is restricted to office personnel, unless other arrangements are made with the commission director or designee.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Article IV, section 31 of the state Constitution. 91-04-060 (Order 3), § 292-10-070, filed 2/5/91, effective 3/8/91.]

Chapter 292-11 WAC

AGENCY SUBSTANTIVE RULES

WAC

292-11-010	Purpose of this chapter.
292-11-020	Definitions.

WAC 292-11-010 Purpose of this chapter. The purpose of this chapter is to provide substantive rules implementing the Ethics in Public Service Act (chapter 42.52 RCW). The substantive rules in this chapter are intended to apply to all state employees of the judicial branch of state government, including "judges" as defined in the *Commission On Judicial Conduct Rules of Procedure (CJCRP)*.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.370. 97-13-075, § 292-11-010, filed 6/18/97, effective 7/19/97.]

WAC 292-11-020 Definitions. (1) The term "measurable expenditure" as used in RCW 42.52.180 (2)(b) shall mean an expenditure or consumption of public resources having more than a de minimis cost and value.

(2) As used herein, the term "de minimis cost and value" shall refer to a cost and/or value of the actual use of public resources that is sufficiently small to be reasonably disregarded as negligible or trifling.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.370. 97-13-075, § 292-11-020, filed 6/18/97, effective 7/19/97.]

Chapter 292-100 WAC

PROCEDURAL RULES

WAC

292-100-005	Purpose.
292-100-006	Adoption of model rules of procedure.
292-100-007	Definitions.
292-100-010	Initiation of complaint.
292-100-020	Complaint procedures—Status of complainant and others.
292-100-030	Procedures for filing complaints.
292-100-040	Acceptance and preliminary review of complaints.
292-100-041	Investigation of complaints.
292-100-042	Board staff referral of allegations.
292-100-045	Dismissal of complaints.
292-100-046	Complainant's request for review of executive director's dismissal order.
292-100-047	Board member's request for review of executive director's dismissal order.
292-100-050	Determination on reasonable cause.
292-100-060	Notice of hearing—Filing of answer.
292-100-080	Investigation procedures—Subpoenas.
292-100-090	Informal settlement—Cases resolvable by stipulation.
292-100-100	Prehearing conference—Rule.
292-100-105	Discovery—Authority of presiding officer.

292-100-110	Hearings—Discovery—Subpoenas.
292-100-120	Hearings—Discovery—Methods authorized.
292-100-130	Hearings—Discovery—Depositions and interrogatories—Notice.
292-100-140	Depositions and interrogatories in hearings—Protection of parties and deponents.
292-100-150	Discovery—Production of documents and use at hearing.
292-100-160	Conduct of hearings.
292-100-170	Review of initial orders by an administrative law judge.
292-100-175	A board member's request for review of initial orders.
292-100-180	Brief adjudicative proceeding—Authority.
292-100-190	Brief adjudicative proceeding—Procedure.
292-100-200	Brief adjudicative proceeding—Administrative review procedures.
292-100-210	Reconsideration of final orders.
292-100-220	Effective date.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

292-100-070	Investigation materials not disclosable during investigation. [Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-070, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.] Repealed by 01-13-033, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425.
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WAC 292-100-005 Purpose. The purpose of this chapter is to promulgate executive ethics board rules concerning complaints, investigations, and hearings pursuant to RCW 42.52.410, 42.52.420, 42.52.430, 42.52.470 and 42.52.500.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-005, filed 3/2/99, effective 4/2/99.]

WAC 292-100-006 Adoption of model rules of procedure. The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the board. In the case of a conflict between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the board shall take precedence.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-006, filed 3/2/99, effective 4/2/99.]

WAC 292-100-007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, the investigator, attorneys who bring cases before the board, and the training and information specialist.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) "Lobbying," for the purposes of RCW 42.52.380, does not include written communication by the board to members of the state legislature or to any other government official on matters pertaining directly to the Ethics in Public Service Act.

(5) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person

who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(6) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(7) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

(8) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

[Statutory Authority: RCW 42.52.360 (2)(b), 05-19-142, § 292-100-007, filed 9/21/05, effective 10/22/05. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-007, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-007, filed 3/2/99, effective 4/2/99.]

WAC 292-100-010 Initiation of complaint. (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person; or
- (b) The board.

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board may file a complaint if appropriate.

(4) Complaints initiated by the board will be signed on behalf of the board by the executive director.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-010, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-010, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

WAC 292-100-020 Complaint procedures—Status of complainant and others. (1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) This section does affect the right to request a review of a board staff decision to dismiss complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

(3) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-020, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Procedures for filing complaints.

(1) A complaint filed with the board shall be in writing on a (2007 Ed.)

form provided by the board, or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant or by the complainant's counsel.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation(s) and the name of person(s) responsible and the complaint should also include the date, time, and place of each alleged violation; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-030, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-040 Acceptance and preliminary review of complaints. (1) Upon receiving a complaint, the board staff shall review the complaint for completeness. If a complaint is complete, it will be accepted for filing. If a complaint is incomplete, the complaint shall be returned to the complainant with a statement of the reasons the complaint has not been accepted.

(2) Once a complaint has been accepted, board staff will review the complaint, determine the extent of investigation required and determine whether the complaint may be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-040, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

WAC 292-100-041 Investigation of complaints. (1) If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045, the board staff shall conduct a preliminary investigation.

(2) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint or a summary thereof, and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(3) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the

investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(4) The board staff shall reduce the results of a preliminary review or investigation to writing.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-041, filed 6/13/01, effective 7/14/01.]

WAC 292-100-042 Board staff referral of allegations.

(1) The board staff may refer a complaint or a summary thereof to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least thirty days. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate law enforcement authority and if referred, will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-042, filed 6/13/01, effective 7/14/01.]

WAC 292-100-045 Dismissal of complaints. (1) If after a preliminary review or investigation the board or the board staff determines that:

(a) Any alleged violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) The complaint presents a violation of chapter 42.52 RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter, the executive director may dismiss the complaint by issuing an order of dismissal.

(2) If the executive director dismisses the complaint, the preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the complainant, respondent, and the board and shall include a statement of the complainant's right to appeal to the board. (See RCW 42.52.425.)

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(3) If the board dismisses the complaint, written notice shall be provided to the complainant, respondent, and the board. (See RCW 42.52.425.)

[Statutory Authority: RCW 42.52.360 (2)(b). 07-02-001, § 292-100-045, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-045, filed 6/13/01, effective 7/14/01.]

WAC 292-100-046 Complainant's request for review of executive director's dismissal order. (1) Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.

(2) A request for review must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

(3) A request for review shall state the grounds therefor.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

(b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) The complainant's request for review;

(e) The executive director's response to the request for review; and

(f) Any additional material requested by the chair.

(5) The board shall review the record and deliberate in closed session, without oral argument, and act on the request at the next meeting at which it may be practicable by:

(a) Affirming the dismissal;

(b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) In reviewing the executive director's order of dismissal, the board shall base its review on whether the executive director had a rational basis for the decision. The board only shall reverse a decision to the extent that a rational basis is lacking.

(7) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-046, filed 6/13/01, effective 7/14/01.]

WAC 292-100-047 Board member's request for review of executive director's dismissal order. (1) Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.

(3) A request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

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(b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) Any additional material requested by the chair or the board member who requested the review.

(5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable by:

(a) Affirming the dismissal;

(b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-047, filed 6/13/01, effective 7/14/01.]

WAC 292-100-050 Determination on reasonable cause. (1) Following the preliminary investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the potential penalty should be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred and whether any potential penalty should be greater than \$500.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If after determining reasonable cause, the board further determines that the penalty and costs should be greater than \$500, the respondent shall be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose penalty and costs greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

[Statutory Authority: RCW 42.52.360 (2)(b). 07-02-001, § 292-100-050, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-050, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-

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050, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

WAC 292-100-060 Notice of hearing—Filing of answer. (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause and a copy of the board staff's written investigation report. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(3) Failure to file an answer to the written determination on reasonable cause within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

(5) Within 30 days of service of the written determination on reasonable cause, the respondent shall have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.

(6) The respondent shall be notified of the date of the hearing no later than 20 days before the hearing date.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-060, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-080 Investigation procedures—Subpoenas. (1) During the course of an investigation, the board, a board member, or the executive director, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

(a) Specifically describe the information which is sought, and

(b) Require the production of information at a reasonable place and time, but no later than ten days from the date it is served, and

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-080, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-090 Informal settlement—Cases resolvable by stipulation. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any respondent may request settlement by notifying board staff in writing.

(b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. When board staff and the respondent agree that some or all of the facts are uncontested and a stipulation of the facts is reached, board staff is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.

(c) If settlement of a hearing may be accomplished by informal negotiation, negotiations may be concluded by:

(i) Stipulation of facts by the parties; or

(ii) Stipulation of facts, conclusions and penalty by the parties.

(iii) A stipulated order agreed to by the parties.

(d) Board staff shall only present proposed stipulations and settlements to the board which it recommends the board adopt.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation and his or her attorney, if represented. The stipulation may be recited on the record at the hearing. The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing. If the board requests

additional facts be presented, the matter shall be referred to the board staff for further investigation.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-090, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

WAC 292-100-100 Prehearing conference—Rule. (1)

In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board staff or respondent to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses;
- (e) Authorizing discovery by any party;
- (f) Scheduling order; and
- (g) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, 01-13-033, § 292-100-100, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-100, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

WAC 292-100-105 Discovery—Authority of presiding officer. After a finding of reasonable cause, no discovery is permitted by a party pursuant to WAC 292-100-110 through 292-100-150 unless authorized by the presiding officer. In deciding whether to authorize discovery and the extent of discovery to be allowed, the presiding officer shall consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing. If the determination of reasonable cause includes an allegation that the respondent has violated RCW 42.52.180, the presiding officer shall permit discovery by the parties. Prior to the appointment of a presiding officer, the chair or other member designated by the board may authorize discovery if the party can demonstrate a compelling reason why discovery must be conducted prior to the appointment of a presiding officer.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-105, filed 3/2/99, effective 4/2/99.]

WAC 292-100-110 Hearings—Discovery—Subpoenas. (1) The board, a board member, or the executive director may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other

records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas for hearings must be filed with the presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion and before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-110, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-110, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-120 Hearings—Discovery—Methods authorized. The following discovery methods are authorized: Deposition upon oral examination, written interrogatories, requests for production, and requests for admission. Deposition upon oral examination, written interrogatories, and requests for admission may be used as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas, except that board staff and the respondent may stipulate to other arrangements.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-120, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-120, filed 10/30/96, effective 11/30/96.]

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the presiding officer and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-130, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

(2007 Ed.)

WAC 292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-140, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-140, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Discovery—Production of documents and use at hearing. (1) Any materials to be presented at the hearing shall be provided to the executive director and to the opposing party no less than ten days prior to the hearing.

(2) Upon agreement by both parties, additional documentary evidence may be presented at the hearing. The parties shall arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging exhibits to be introduced. When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of ten copies.

(3) If the parties do not reach an agreement on the submission of additional documentary evidence, at the commencement of the hearing the presiding officer shall, after hearing argument, rule on the admissibility of the documents. The proponent of the documents proposed for submission must show good cause why the documents could not be submitted ten days prior to the hearing.

(4) "Good cause" is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the presiding officer must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

[Statutory Authority: RCW 42.52.360 (2)(b). 07-02-001, § 292-100-150, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-150, filed 6/13/01, effective

7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-150, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

WAC 292-100-160 Conduct of hearings. (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates by request of a respondent, the board may choose to sit with the administrative law judge to hear the matter. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters. If an administrative law judge hears the matter at the request of the board, the board may choose to sit with the administrative law judge or the board may request that the administrative law judge hear the matter alone and prepare an initial order.

(3) Following a hearing in which the board participates, the board may conclude that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is (are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall serve each party, the complainant and the employing agency, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

[Statutory Authority: RCW 42.52.360 (2)(b). 07-02-001, § 292-100-160, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-160, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-160, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Review of initial orders by an administrative law judge. (1) An initial order by an administrative law judge shall become the final order of the board within forty-five days of the initial order unless:

(a) A board member determines that the initial order should be reviewed as provided in WAC 292-100-175;

(b) A party files a petition for review of the initial order within thirty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive director and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive director and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-170, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-170, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

WAC 292-100-175 A board member's request for review of initial orders. (1) Five days after receiving an initial order by an administrative law judge the executive director shall serve a copy of the initial order upon each board member.

(2) A board member who is requesting review of an initial order shall provide written notice to the executive director within thirty days of service on the board member.

(3) Upon receipt of a board member's notice of review the executive director shall serve the notice of review on all other parties.

(4) The board shall personally consider the whole record or such portions of it as may be required for its deliberation.

(a) The board may afford each party an opportunity to present written argument or afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-175, filed 6/13/01, effective 7/14/01.]

WAC 292-100-180 Brief adjudicative proceeding—Authority. Pursuant to RCW 34.05.482 through 34.05.494, after a finding of reasonable cause and notwithstanding the provision of WAC 292-100-050 through 292-100-170, the board may provide a brief adjudicative proceeding as set forth in WAC 292-100-190 for alleged violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and the penalty and costs no greater than \$500 will be assessed for the violations.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-180, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-180, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

WAC 292-100-190 Brief adjudicative proceeding—

Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

(a) The determination of reasonable cause and the investigative report;

(b) The maximum amount of the penalty and costs which can be imposed at the hearing; and

(c) Person's right to respond, within twenty days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations no longer meet the criteria in WAC 292-100-180, the presiding officer shall immediately adjourn the brief adjudicative proceeding and direct the matter to be scheduled for a public hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-190, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-190, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Brief adjudicative proceeding—

Administrative review procedures. (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-200, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-200, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

WAC 292-100-210 Reconsideration of final orders.

(1) Within ten days of the service of a final order, any party (2007 Ed.)

may file a petition for reconsideration as provided in RCW 34.05.470.

(2) Any party may make a motion for reconsideration of a final order of the board as provided in RCW 34.05.470. The request for reconsideration shall be filed at the office of the board and served on the parties no later than ten days after service of the final order. A request or motion for reconsideration shall specify the grounds therefor.

(3) Any party may respond to a request for reconsideration. The response is due no later than ten days after the party is served with the request.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-210, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-210, filed 3/2/99, effective 4/2/99.]

WAC 292-100-220 Effective date. When WAC 292-100-007 through 292-100-210 go into effect, they will apply to all pending cases.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-220, filed 6/13/01, effective 7/14/01.]

Chapter 292-110 WAC AGENCY SUBSTANTIVE RULES

WAC

292-110-010	Use of state resources.
292-110-020	Working hours.
292-110-030	Measurable expenditure.
292-110-050	Advisory opinions.
292-110-060	Current state officers and employees contracting with state agencies.

WAC 292-110-010 Use of state resources. (1) **Statement of principles - stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Personal benefit or gain may include a use solely for personal convenience, or a use to avoid personal expense. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use. Employees and officials are cautioned that their own personal use of state resources should never interfere with another state official or employee, or obligate another employee to make personal use of state resources. In addition, state employees have an affirmative duty to ensure that any personal use of state resources is the most efficient in terms of time and resources.

(2) **Permitted uses.** Use of state resources that is reasonably related to the conduct of official state duties does not violate RCW 42.52.160. In addition, an agency head or designee may authorize a use of state resources that is related to an official state purpose but not directly related to an employee's official duty, for example, conducting an agency combined fund campaign. Such uses shall be specifically authorized in writing and any use shall strictly conform to specific agency guidance.

(3) **Permitted uses - under limited circumstances.** Extensive or repeated personal misuse of state resources,

including state time, significantly undermines public trust in state government. Nevertheless, a very limited personal use of state resources that supports organizational effectiveness would not undermine public trust and confidence. An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee. In addition, and notwithstanding the prohibition in RCW 42.52.160(1), but subject to subsection (6) of this section, a state officer or employee may make an occasional but limited use of state resources only if each of the following conditions are met:

- (a) There is little or no cost to the state;
- (b) Any use is brief in duration, occurs infrequently, and is the most effective use of time or resources;
- (c) The use does not interfere with the performance of the officer's or employee's official duties;
- (d) The use does not disrupt or distract from the conduct of state business due to volume or frequency;
- (e) The use does not disrupt other state employees and does not obligate them to make a personal use of state resources; and
- (f) The use does not compromise the security or integrity of state property, information, or software.

(4) **Permitted use of computers and electronic mail, and the internet.** A state officer or employee may use state computers and other equipment to access computer networks or other data bases, including the internet and electronic mail provided such use conforms to ethical standards under subsection (3) of this section, and the use is not otherwise prohibited under subsection (6) of this section. A state officer or employee may use state computers and other equipment to access the internet only if the officer's or employee's agency has adopted a policy governing internet access that is consistent with subsections (3) and (6) of this section.

(5) **No expectation of privacy.** Electronic mail, facsimile transmissions, and voice mail are technologies that may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. An electronic record is reproducible and is therefore not private. Such records may be subject to disclosure under the public disclosure law, or may be disclosed for audit or legitimate state operational or management purposes.

(6) **Prohibited uses.** The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources.

- (a) Any use for the purpose of conducting an outside business or private employment;
- (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: A private business, a nonprofit organization, or a political party (unless provided for by law or authorized by an agency head or designee);
- (c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state

resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

(d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and

(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

(7) **Reimbursement for personal use.** Establishing a system for reimbursement for private or personal use of state resources undermines the purpose of the Ethics in Public Service Act and imposes significant administrative burdens on state agencies. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance and must result in no cost to the state, including administrative costs. To be valid under this rule, the board must approve any reimbursement system implemented by an agency.

(8) **Agency policies encouraged.** State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, it would constitute a violation of agency policy.

(9) **Frequently asked questions and examples.** The board maintains a list of frequently asked questions and examples that provide additional guidance regarding this rule. State officers and employees are encouraged to review this document at the board's web site www.wa.gov/ethics or to request a copy of the document through the board's office.

Washington State Executive Ethics Board
2425 Bristol Court SW
P.O. Box 40149
Olympia, WA 98504-0149
Or by electronic mail at: ethics@atg.wa.gov

[Statutory Authority: RCW 42.52.360 (2)(b), 42.52.160(3), 02-07-074, § 292-110-010, filed 3/18/02, effective 4/18/02; 98-08-054, § 292-110-010, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 42.52.160(3), 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]

WAC 292-110-020 Working hours. (1) RCW 42.52.-180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency includes use of state officers or state employees during working hours. The purpose of the rule is to define the term "working hours" for officers and employees of the executive branch of state government. The prohibition in RCW 42.52.180(1) only applies during working hours. Nothing in RCW 42.52.180(1)

or this rule prohibits a state officer or state employee from assisting in a campaign during nonworking hours. An officer or employee who assists in a campaign during nonworking hours may not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For officers and employees with fixed schedules, working hours are the hours between the starting and ending times of their positions. Officers and employees with fixed schedules may not assist in a campaign during these fixed working hours, unless they are on a lunch break under section four of this rule or on annual leave under section five of this rule.

Example 1: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. The employee is in a position with a fixed schedule of Monday through Friday 8:00 a.m. to 5:00 p.m. The employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday or on Saturday or Sunday.

Example 2: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. Although the agency is open during the hours 8:00 a.m. to 5:00 p.m., the employee is in a position with a fixed schedule of Monday through Thursday 3:00 p.m. through 12:00 a.m. The employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Thursday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Thursday or anytime on Friday, Saturday or Sunday.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For officers and employees who do not have fixed schedules, working hours are defined as either:

(a) The hours set forth in any policy on working hours adopted by an agency. Agencies have flexibility in determining working hours for the officers and employees to meet their unique needs so long as the time considered to be working hours is clearly established. If an agency does not adopt a working hours policy, working hours shall be 8:00 a.m. to 5:00 p.m. Monday through Friday when state agencies are generally open to the public; or

(b) The work schedule for an officer or employee approved by the agency, if it is different from the agency policy or, if the agency has not adopted a policy, 8:00 a.m. to 5:00 p.m. Monday through Friday.

Example 3: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: The day shift (8:00 a.m. to 5:00

p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the swing shift (3:00 p.m. to 12:00 a.m.) Monday through Friday. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 3:00 p.m. and sometimes after 3:00 p.m. Similarly, the employee may leave work before or after 12:00 a.m. This employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Friday or on Saturday or Sunday.

Example 4: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday, or on Saturday or Sunday.

Example 5: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: The day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the day shift (8:00 a.m. to 5:00 p.m.) Monday through Friday. However, the agency has approved a different work schedule for this employee. Instead of the usual day shift of 8:00 a.m. to 5:00 p.m., the employee works 7:00 a.m. to 4:00 p.m. Since the employee does not have a fixed schedule the employee, sometimes comes to work before 7:00 a.m. and sometimes after 7:00 a.m. Similarly, the employee may leave work before or after 4:00 p.m. This employee's working hours are 7:00 a.m. to 4:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 7:00 a.m. or after 4:00 p.m. Monday through Friday, or on Saturday or Sunday.

(4) Working hours do not include state legal holidays unless the officer's or employee's work schedule requires the officer or employee to work on a state legal holiday.

(5) Working hours do not include the time approved and designated for an officer's or employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of an officer's or employee's work schedule. If an officer or employee engages in campaign activity during the lunch break, the officer or employee may not make use of any of the facilities of the agency.

Example 6: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday with a lunch break between 12:00 p.m. and 1:00 p.m. The employee may assist in a campaign during the employee's lunch break between 12:00 p.m. and 1:00 p.m.

(6) Working hours do not include the time in official leave status if the leave has received advance documented or written authorization. An officer or employee on leave may assist in a campaign.

Example 7: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On Friday the employee receives advance written authorization to be on leave for five days, Monday through Friday of the next week. The employee may assist in a campaign during this leave.

Example 8: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. In this agency employees without fixed schedules take leave during a month and then get written authorization for the leave at the end of the month. An

employee takes leave Monday through Friday and assists in a campaign. At the end of the month the employee obtains written authorization for the leave. The employee has assisted in a campaign during working hours since the employee did not obtain written authorization prior to taking leave to assist in a campaign. To assist in a campaign while on leave, the employee must obtain written authorization prior to going on leave.

(7) The definition of working hours also includes any time an officer or employee is actually working. For an officer or employee with a fixed schedule, working hours includes overtime when the officer or employee is working additional hours other than those in the fixed schedule. For an officer or employee without a fixed schedule, working hours include any time the officer or employee is working.

Example 9: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On a Monday the employee works from 8:00 a.m. to 9:00 p.m. Even though the employees working hours are 8:00 to 5:00 the time spent working between 5:00 p.m. and 9:00 p.m. are working hours because the employee is working for the agency during this time.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are state officers in the executive branch subject to RCW 42.52.180. These officers are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may assist in a campaign at any time. However, if these officers do assist in a campaign, they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

[Statutory Authority: RCW 42.52.180(1) and 42.52.360 (2)(b). 96-22-030, § 292-110-020, filed 10/30/96, effective 11/30/96.]

WAC 292-110-030 Measurable expenditure. (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) RCW 42.52.180(2) sets forth exceptions to the prohibition in RCW 42.52.180(1). The exceptions include a statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry without an actual measurable expenditure of public funds (RCW 42.52.180 (2)(b)); activities that are part of the normal and regular conduct of the office (RCW 42.52.180 (2)(c)); and de minimis use of public facilities by statewide elected officials incidental to the preparation or delivery of permissible communications initiated by the official regarding the official's views on a ballot proposition that may foreseeably affect a matter that falls within the official's constitutional or statutory responsibilities (RCW 42.52.180 (2)(d)).

(3) Elected officials regularly expend public funds to respond to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions. RCW 42.52.180 (2)(b) permits elected officials to respond to such inquiries regarding ballot propositions without an actual measurable expenditure of public funds. For purposes of RCW 42.52.180 (2)(b) measurable expenditure means an expenditure or separately identifiable cost or specific portion of a cost incurred by the agency beyond the normal and regular expenditures or costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 1: A statewide elected official conducts a press conference in state office space. During the conference the official is asked about a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies to the question explaining his or her opinion on the ballot proposition and the reason for the opinion. It is not an ethical violation to reply to such an inquiry. The use of state office space, during the time the official answers the question about the ballot proposition, does not result in a measurable expenditure of public funds. This is because the expenditure or cost of the office space during this period is not a separately identifiable cost.

Example 2: A statewide elected official receives a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. It is not an ethical violation to reply to such an inquiry. There is no measurable expenditure of public funds because the agency has not incurred a cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 3: A statewide elected official received a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. The official sends copies of the reply to other individuals on the agency mailing list. This is an ethical violation. While it is permissible to reply to the constituent who inquired about the official's position (Example 1), it is improper to send copies of the response to others. There is a measurable expenditure of public funds because the cost of the paper and postage for the additional copies is a separate identifiable cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 4: A statewide elected official writes a letter to the editor of a newspaper stating the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. In the course of preparing the letter the official has the assistance of staff and uses office space, equipment, stationery and postage. This is an ethical violation. The official has used the facilities of the agency and the exception in RCW 42.52.180 (2)(b) does not apply because the official is not responding to an inquiry.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.360 (2)(b). 96-22-029, § 292-110-030, filed 10/30/96, effective 11/30/96.]

WAC 292-110-050 Advisory opinions. State officers and employees are encouraged to seek an advisory opinion whenever they have questions concerning ethical standards or potential conflicts of interest. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and thereby prevent ethics violations.

(1) Whenever requested by a state officer, state employee, or other person, or whenever it deems it in the public interest, the board shall issue advisory opinions. Requests for advisory opinions, if not issued in response to a motion by the board, shall be written and signed, and addressed to either the chair of the board or the executive director. Requests may be made by electronic mail. Each request should provide sufficient information and circumstances to enable the board to evaluate the request and issue the advisory opinion.

(2) Upon receiving a request for an advisory opinion, the executive director shall, within fifteen calendar days of receipt, acknowledge the request. Persons requesting advisory opinions shall be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board shall either:

(a) Deny the request and state the reason(s) for the denial; or,

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board and is signed by the executive director.

(5) A person requesting an advisory opinion may, upon receiving the opinion, petition the board for reconsideration within thirty days of the date the opinion is issued if the person believes that the opinion is erroneous in factual detail. A petition for reconsideration shall be written and signed, and shall briefly state the errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board shall give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) **Informal staff analysis.** It is the responsibility of the executive director to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In providing such advice, the executive director may issue a written nonbinding staff analysis. A non-binding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The executive director shall provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the executive director and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in the complaint relied in good faith on written advice from the executive director.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice and should not be interpreted as indicating approval or disapproval of the advice provided.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-080, § 292-110-050, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b) and (c). 98-03-045, § 292-110-050, filed 1/15/98, effective 2/15/98.]

WAC 292-110-060 Current state officers and employees contracting with state agencies. (1) **Purpose** - The primary purposes of the Ethics in Public Service Act are to prevent conflicts of interest that impair the impartial and independent judgment of state officers and employees and the misuse of state position for private gain. Conflicts of interest occur whenever a state officer or state employee:

(a) Has a beneficial interest relating to a matter in which the officer or employee participated in an official capacity;

(b) Accepts outside compensation for the performance or nonperformance of official duties; or

(c) Accepts or seeks outside compensation from persons that they regulate or conduct state business with.

A misuse of state position occurs whenever a state officer or employee:

(i) Uses his or her official position to influence a contract award; or

(ii) Uses state resources to engage in private work that is not part of official duties.

(2) **Applicable law, standards of review** - RCW 42.52.020 prohibits financial and other interests that conflict with official duties. RCW 42.52.030 prohibits financial and beneficial interests in transactions involving the state. RCW 42.52.030(2) provides alternate conflict of interest provisions related to research and technology transfer agreements at certain institutions of higher education. RCW 42.52.160(1) prohibits the use of state resources for private benefit or gain. RCW 42.52.120(1) prohibits compensation outside of official duties unless certain conditions are met. RCW 42.52.120(2) requires prior board approval of noncompetitive contracts between state officers and employees and any state agency. RCW 42.52.120(3) requires that contracts approved by the board must also be filed with the board within thirty days of execution.

(3) **Approval required** - A state officer or employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received.

(4) **Application for approval** - State officers and employees seeking the approval of the board for a contract, grant application, or outside employment with a state agency shall provide the following information to the executive director no later than thirty days prior to the commencement of the contract:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and a copy of the contract;

(c) The duration and dollar value of the contract, if applicable;

(d) A statement that no state resources will be used to perform the outside employment or to fulfill the contract or grant;

(e) A description of how the work will be performed without the use of state resources; and

(f) A statement that the employing agency has reviewed or approved the outside contract under applicable rules or policies, except when requesting a conditional approval as provided in subsection (5)(b) of this section.

(5) **Approval process** - The executive director shall review the contract or grant application terms and related documents and may determine whether there could be a potential conflict with RCW 42.52.120(1) or other applicable provisions of the Ethics in Public Service Act as noted in subsection (2) of this section. If the executive director determines:

(a) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52

RCW, the executive director shall approve the contract or grant application.

(b) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW but the contract or grant has not been approved by the appointing authority pending a board review, the executive director may conditionally approve the contract or grant application; or

(c) There could be a potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director shall refer the contract or grant application to the board for approval or disapproval.

(6) **Contract amendments** - If a contract has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the employee must resubmit the contract to the board at least fifteen days prior to commencement of work under the amended or altered contract.

(7) **Series of similar contracts** - If a state officer or employee anticipates receiving a series of substantially identical contracts or grants with a state agency is anticipated, they may request that the board preapprove such contracts or grants. Preapproval shall be effective for the period of one calendar year, after which the state officer or employee shall resubmit the request.

(8) **Exemptions, preapproved contracts or grants** - An employee who has a contract or grant or a beneficial interest therein which is preapproved by the board under this section is not required to file an application for approval of the contract. However, the employee is responsible for determining that the contract or grant would not conflict with RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW. Provided that the applicable conditions in RCW 42.52.120(1) are met, the following contracts are approved by the executive ethics board:

(a) A contract or grant whereby the state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the officer or employee does not exercise discretionary judgment with regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a bona fide community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment;

(c) A contract held by a spouse, in which the officer or employee has a beneficial interest, with a state agency, provided that the officer or employee did not participate in the contract;

(d) A contract that was received by an officer or employee of an institution of higher education to provide expert witness services in state litigation provided no higher education resources are used to perform the duties; there is no conflict with the performance of official duties; and the

officer or employee did not use his or her official position to influence the contract; and

(e) A contract or grant that was received by an officer or employee of an institution of higher education or of the Spokane Intercollegiate Research and Technology Institute under conditions that complied with RCW 42.52.030(2). At the request of the institution the board may advise the institution if a specific contract or grant would raise significant conflict of interest concerns under applicable provisions of chapter 42.52 RCW.

(9) **Filing required** - Final contracts reviewed under this rule shall be filed with the executive director within thirty days of execution. An employee who is awarded a contract or grant preapproved under subsection (8)(a) through (c) of this section shall file a copy of the contract with the board.

(10) **Filing exemptions** - An officer or employee of an institution of higher education or of the Spokane Intercollegiate Research and Technology Institute who is awarded a contract or grant preapproved under subsection (8)(d) or (e) of this section is not required to file a copy of the contract or grant with the board. A copy of all expert witness contracts awarded under subsection (8)(d) of this section shall be maintained by the office of the attorney general subject to review by board staff. Those state institutions of higher education or the Spokane Intercollegiate Research and Technology Institute who award contracts or grants under RCW 42.52.030(2) shall maintain copies of all contracts or grants approved under subsection (8)(e) of this section. In lieu of filing the contracts with the board, these institutions shall provide the board by September 1 of each year a brief summary of all such contracts or grants awarded in the previous fiscal year.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.120(2). 04-18-019, § 292-110-060, filed 8/23/04, effective 9/23/04. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-080, § 292-110-060, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-04-001, § 292-110-060, filed 1/21/98, effective 2/21/98.]

Chapter 292-120 WAC

EXECUTIVE ETHICS BOARD—PENALTY RULES

WAC

292-120-010	Purpose.
292-120-020	Board may impose sanctions.
292-120-030	Criteria for determining sanctions.
292-120-035	Safe harbor provision.
292-120-040	Payment of civil penalty.

WAC 292-120-010 Purpose. The purpose of this rule is to set out the criteria that the board may consider when imposing sanctions for a violation of chapter 42.52 RCW and the rules adopted under it.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-010, filed 3/18/97, effective 4/18/97.]

WAC 292-120-020 Board may impose sanctions. If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions:

(1) Reprimand, either by letter of instruction or formal reprimand;

(2) Recommend to the appropriate authorities suspension, removal from the position, or prosecution or other appropriate remedy;

(3) A civil penalty of up to five thousand dollars per violation or three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection 5;

(4) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state auditor;

(5) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty;

(6) Recommend to the governor and the appropriate agency that they request the attorney general bring an action to cancel or rescind action taken by the violator, upon a board finding that:

(a) The violation has substantially influenced the state action; and

(b) Interests of the state require cancellation or rescission.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-020, filed 3/18/97, effective 4/18/97.]

WAC 292-120-030 Criteria for determining sanctions. In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:

(1) The monetary cost of the violation including:

(a) The cost of the violation to the state;

(b) The value of anything received or sought in the violation;

(c) The amount of any damages incurred by the state as a result of the violation;

(d) The costs incurred in enforcement, including reasonable investigative costs;

(2) The nature of the violation including whether the violation:

(a) Was continuing in nature;

(b) Was motivated by financial gain;

(c) Involved criminal conduct;

(d) Impaired a function of the agency;

(e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;

(f) Involved personal gain or special privilege to the violator;

(3) Aggravating circumstances including whether the violator:

(a) Intentionally committed the violation with knowledge that the conduct constituted a violation;

(b) Attempted to conceal the violation prior to the filing of the complaint;

(c) Was untruthful or uncooperative in dealing with the board or the board's staff;

(d) Had significant official, management, or supervisory responsibility;

(e) Had committed prior violations found by the board;

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(f) Incurred no other sanctions as a result of the violation;

(4) Mitigating factors including:

(a) Prior corrective action taken against the violator;

(b) Prior recovery of damages to the state;

(c) The unethical conduct was approved or required by the violator's supervisor;

(d) The violation was unintentional;

(e) Other mitigating factors deemed relevant by the board.

(5) For purposes of this section, each act which violates one or more provisions of chapter 42.52 RCW, or rules adopted under it, may constitute a separate violation.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 02-04-003, § 292-120-030, filed 1/23/02, effective 2/23/02. Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-030, filed 3/18/97, effective 4/18/97.]

WAC 292-120-035 Safe harbor provision. The board invites and encourages agencies to adopt policies that prevent agency employees from violating the Ethics in Public Service Act. Pursuant to RCW 42.52.360(4), the board may review and approve agency policies. In determining appropriate sanctions, the board may consider agency policies in effect at the time of the conduct. In addition:

(1) The board will not impose sanctions for conduct that would violate the Ethics in Public Service Act, if the conduct at issue was permitted under a board-approved agency policy, as provided for in RCW 42.52.360(4), prior to the conduct occurring.

(2) The effect of the safe harbor from sanction, as provided in WAC 292-120-035(1), shall be limited to conduct that conforms to a board-approved agency policy.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 02-04-003, § 292-120-035, filed 1/23/02, effective 2/23/02.]

WAC 292-120-040 Payment of civil penalty. Payment of any monetary penalty assessed by the board must be made within 45 days of the date of the board's order, unless an extension is granted by the board.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-040, filed 3/18/97, effective 4/18/97.]

Chapter 292-130 WAC

AGENCY ORGANIZATION—PUBLIC RECORDS

WAC

292-130-010	Purpose.
292-130-020	Function—Organization—Office.
292-130-030	Operations and procedures.
292-130-040	Executive director.
292-130-050	Public records—Availability.
292-130-060	Index prior to January 1, 2001.
292-130-065	Index after January 1, 2001.
292-130-070	Public records—Officer.
292-130-080	Hours for seeking public records.
292-130-090	Requests for public records.
292-130-100	Response to public records requests.
292-130-110	Copying fees.
292-130-120	Protection of public records.
292-130-130	Exemptions.
292-130-140	Review of denials of public records request.

WAC 292-130-010 Purpose. The purpose of this chapter is to provide rules implementing RCW 34.05.220 and 42.17.250 through 42.17.320 for the executive ethics board.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-010, filed 11/3/98, effective 12/4/98.]

WAC 292-130-020 Function—Organization—Office. The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

The board's administrative office is located at 2425 Bristol Court S.W. 1st Floor, P.O. Box 40149, Olympia, WA 98504-0149. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-020, filed 11/3/98, effective 12/4/98.]

WAC 292-130-030 Operations and procedures. The board holds regular scheduled meetings on the second Friday of each month at 9:00 a.m. unless a different time is noted on the agenda, except August and December when no meetings are held. The meetings are held at 2425 Bristol Court, Conference Room 148, unless circumstances require relocating to another site as designated by the executive director of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

[Statutory Authority: RCW 42.52.360 (2)(b). 05-19-142, § 292-130-030, filed 9/21/05, effective 10/22/05. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-030, filed 11/3/98, effective 12/4/98.]

WAC 292-130-040 Executive director. The executive director shall perform the following duties under the general authority and supervision of the board:

(1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-045, regarding complaints received by the board;

(2) Render informal nonbinding advice, pursuant to RCW 42.52.360 (2)(b) and (c) and WAC 292-110-050;

(3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;

(4) Act as records officer and administrative arm of the board;

(5) Coordinate the policies of the board and the activities of board staff, supervise board staff as appropriate;

(6) Act as a liaison between the board and other public agencies; and

(7) Conduct ethics training and information outreach.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-040, filed 11/3/98, effective 12/4/98.]

WAC 292-130-050 Public records—Availability. Public records are available for inspection and copying except as otherwise provided by RCW 42.17.310 and chapter 292-100 WAC.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-050, filed 11/3/98, effective 12/4/98.]

WAC 292-130-060 Index prior to January 1, 2001. Prior to January 1, 2001, the board indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at www.wa.gov/ethics.

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints received by the board are indexed by year, number, and name of the respondent and agency.

(2) Whistleblower referrals from the state auditor are indexed by whistleblower case number.

(3) Contract approvals are filed by year and name of the state employee.

(4) Agency ethics policies are filed by agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-060, filed 11/3/98, effective 12/4/98.]

WAC 292-130-065 Index after January 1, 2001. The board has indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at www.wa.gov/ethics.

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints, including referrals from the state auditor, received by the board are indexed by year, month, day, and sequential number. Complaints that are referred for full investigation are indexed by year and sequential case number.

(2) Requests for advisory opinions, including informal staff analysis, are indexed by year, month, day, and sequential number. Advisory opinions issued by the board are indexed by year and sequential opinion number.

(3) Requests for contract approvals, under WAC 292-110-060 are indexed by year, month, day, sequential number and name of the state employee.

(4) Requests for board review of agency ethics policies, filed under RCW 42.52.360(4) are indexed by year, month, day, and sequential number. Agency ethics policies that are approved by the board are indexed by year, month, day, sequential policy number, and agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-065, filed 6/13/01, effective 7/14/01.]

WAC 292-130-070 Public records—Officer. The public records officer for the board shall be the executive director to the board.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-070, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-070, filed 11/3/98, effective 12/4/98.]

WAC 292-130-080 Hours for seeking public records. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-080, filed 11/3/98, effective 12/4/98.]

WAC 292-130-090 Requests for public records. Chapter 42.17 RCW requires that agencies protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency; therefore, public records may be inspected or copied or copies of such records obtained, upon compliance with the following procedure:

(1) A request shall be made in writing either via electronic mail or in writing upon a form prescribed by the administrative office. The form shall be presented to the public records officer, or to a member of the staff designated by him or her if the public records officer is not available, during office hours. The request shall include:

- (a) The name of the person requesting the record;
- (b) The calendar date on which the request was made;
- (c) A description of the record or records requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made to assist in appropriately identifying the public record or public records requested.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-090, filed 11/3/98, effective 12/4/98.]

[Title 292 WAC—p. 22]

WAC 292-130-100 Response to public records requests. (1) The administrative office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:

(a) Providing the record;

(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or

(c) Denying the public records request.

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the scope of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons who may be named in a record;

or

(d) Determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-100, filed 11/3/98, effective 12/4/98.]

WAC 292-130-110 Copying fees. No fees shall be charged for the inspection of public records. The office will charge one dollar for the first ten pages and ten cents per copy for additional pages for requests made under this chapter. The public records officer may waive the fees for copies when the expense of processing the payment exceeds the cost of providing the copies. These charges are necessary to reimburse the office for the costs of providing copies of public records and use of the copying equipment. The office may require that all charges be paid in advance of release of the copies.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-110, filed 11/3/98, effective 12/4/98.]

WAC 292-130-120 Protection of public records. (1) No person shall knowingly alter, deface, or destroy public records of the office.

(2) Original copies or portions thereof of public records of the office shall not be removed from the premises.

(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same sequence or organization as when furnished.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-120, filed 11/3/98, effective 12/4/98.]

WAC 292-130-130 Exemptions. (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.

(2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing. If a

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public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. The following records are not considered part of the investigation file and are releasable upon request:

- (a) Complaints, upon receipt by the respondent;
- (b) The board staff's preliminary review or investigation report;
- (c) The board's findings of reasonable cause or no reasonable cause; and
- (d) Proposed stipulations and settlements, upon receipt by the board.

(3) In addition, pursuant to RCW 42.17.310, the board reserves the right to withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-130, filed 11/3/98, effective 12/4/98.]

WAC 292-130-140 Review of denials of public records request. (1) Any person who objects to a denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chair of the board. The chair shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-140, filed 11/3/98, effective 12/4/98.]